

**State of New Hampshire Insurance Department
56 Old Suncook Road
Concord, New Hampshire 03301**

**Paula T. Rogers
Commissioner**

**BULLETIN
Docket No. INS NO. 01-029-AB**

**TO: ALL PROPERTY & CASUALTY INSURERS WRITING
COMMERCIAL LINES INSURANCE PRODUCTS**

**RE: VOLUNTARY EXPEDITED FILING PROCEDURES FOR
EXCLUSIONS RELATED TO ACTS OF TERRORISM**

**FROM: Paula T. Rogers – Insurance Commissioner
State of New Hampshire**

DATE: December 27, 2001

Background

There has been much uncertainty in the markets for commercial lines property and casualty insurance coverage in light of the substantial losses experienced by the industry on September 11, 2001. Soon after the events, many reinsurers announced that they did not intend to provide coverage for acts of terrorism in future reinsurance contracts. This led to a concerted effort on behalf of all interested parties to seek a temporary federal backstop to calm market fears over future terrorists attacks and the ability of the insurance industry to allocate capital to provide coverage for these unpredictable and potentially catastrophic events. Unfortunately, Congress has been unable to reach agreement on the terms of a temporary federal solution. As a result, insurance regulators find themselves having to consider approval of certain coverage exclusions for acts of terrorism or risk possible serious solvency concerns in the insurance industry.

The intent of this bulletin is to inform you of the New Hampshire Insurance Department's decision to approve certain limited exclusions for acts of terrorism and to provide a voluntary procedure for insurers to use to expedite the filing and timely review of these limited exclusions. As commissioner, I was involved in recent discussions at the National Association of Insurance Commissioners (NAIC) related to this issue. In a recent conference call the members of the NAIC adopted a motion that "if the Congress adjourns without enacting federal terrorism legislation, the states should grant conditional approval to commercial lines endorsements that exclude coverage for acts of terrorism consistent with the exclusion framework developed by ISO. To the extent permitted by state law, such approvals would sunset or be withdrawn 15 business days after the President signs into law a federal backstop to address insurance losses attributed to acts of terrorism, or be subject to other conditions on the approval consistent with state law." By this bulletin, I am informing you of my intent to act in a manner consistent with the recommendation from the NAIC membership. Effective January 1, 2002, New Hampshire has approved ISO forms filings Liability - CL-2001-OWTFO (Amendment No. 2) and Property - CL2001 OWTMF (Amendment No. 2). I believe this to be the best course of action as it balances the need of insurers to have some certainty related to solvency concerns with the business consumers' concerns that their businesses not be subject to uninsured events.

To date many unacceptable exclusions have been filed by insurers to be attached to commercial lines insurance products. These endorsements will be disapproved for use in New Hampshire as inconsistent with the interests of public policy. Instead of approving the very broad total exclusions of coverage for acts of terrorism, this state intends to grant approval to exclusions that are substantially similar to the series of optional endorsements developed by the Insurance Services Office, Inc. (ISO). These endorsements include the following:

COMMERCIAL PROPERTY INTERLINE ENDORSEMENT: IL 09 40 01 02
 (Applies in Standard Fire Policy States)
 COMMERCIAL PROPERTY INTERLINE ENDORSEMENT: IL 09 42 01 02
 (Applies in Standard Fire Policy States)
 COMMERCIAL GENERAL LIABILITY ENDORSEMENT: CG 21 69 01 02
 COMMERCIAL GENERAL LIABILITY ENDORSEMENT: CG 31 42 01 02
 COMMERCIAL GENERAL LIABILITY ENDORSEMENT: CG 31 43 01 02
 COMMERCIAL LIABILITY UMBRELLA ENDORSEMENT: CU 21 29 01 02
 BUSINESSOWNERS ENDORSEMENT: BP 05 12 02 (Applies in Standard Fire Policy States)
 BUSINESSOWNERS ENDORSEMENT: BP 05 13 01 02
 FARM LIABILITY ENDORSEMENT: FL 10 30 01 02

In an unprecedented move recognizing the seriousness of the situation, ISO has indicated that it will permit the use of its copyrighted language by any insurer, including one that is not a current licensee of ISO for policy forms. Insurers that are current licensees of ISO for policy forms can use the new language pursuant to their current ISO agreements and approval by this state of its forms. If you are properly affiliated with ISO, and have given them authorization to file on your behalf, no further action is needed on your part.

Any insurer that does not have a license agreement in effect with ISO for policy forms is required to execute a short, limited license agreement that authorizes the use of the new language. ISO has indicated that there will be no fee for this limited license. You may contact ISO's Customer Service Department directly for more information at 1-800-888-4ISO(4476) using option 2. You may also contact ISO at "info@ISO.com." You will be responsible for assuring compliance with this state's filing requirements, however, you may find that the expedited approval process outlined in this bulletin to be helpful in receiving prompt approval of your filing.

Explanation and Instructions for Expedited Review

The policy exclusions filed by ISO and approved by this state have some significant limitations that provide coverage for acts of terrorism under certain circumstances. For policies providing property insurance coverage the following limitations apply:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period;
- The following incidents are excluded from coverage regardless of the above limitations:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

For policies providing liability insurance coverage the following limitations apply:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period; or
- Fifty or more persons sustain death or serious physical injury. For purposes of this provision serious physical injury means:
 - Physical injury that involves a substantial risk of death;
 - Protracted and obvious physical disfigurement; or
 - Protracted loss of or impairment of the function of a bodily member or organ.
- The following incidents are excluded from coverage regardless of the above limitations:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

These liability endorsements contain concurrent causation language. For consistency purposes we will allow the use of this language, without prejudice, in terrorism endorsements only, as their use is contrary to the current policy of the New Hampshire Insurance Department. We reserve the right to disapprove concurrent causation wording in other liability exclusions.

This state will accept the following definition of acts of terrorism or definitions that are more liberal to policyholders:

Terrorism means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
 - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or to express opposition to) a philosophy or ideology.

For an insurer to receive expedited approval of its exclusions for commercial lines insurance coverages, the exclusionary endorsements must comply with the terms and conditions set forth in this bulletin and be submitted in accordance with the instructions specified below. Further, you must certify that you are either using the ISO endorsements or using an endorsement that provides coverage at least as broad as the approved ISO endorsements. As a reminder, any coverage reduction has to comply with RSA 407:22 & RSA 412:2.

Forms with Instructions

See our web site www.state.nh.us/insurance under Bulletins for the Expedited Filing Application.

Effective Date

This bulletin shall take immediate effect. Any rating organization or insurer filing, meeting approved criteria, received in January 2002 requesting a January 1, 2002 effective date will be honored.